

# Norms and Practices in the Political Actions of Government and Opposition in Tanzania

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## 1. Introduction

This paper looks at norms that exist in the political arena and attempts to explore whether the major political actors adhere to them in their practices in Tanzania. The broad usage of the concept of norms is adopted here. This refers to laws, rules, conventions and policies—all those standards that are regarded globally or locally as measures of acceptable behavior. My emphasis is on judging the extent of the formulation, as well as the practice, of the norms in relation to the democratization process in Tanzania.

## 2. The Concept of Democracy

Democracy is the full participation of citizens in the decisions of units of society to which they belong or the widest participation possible in decisions relevant to one's existence. Notice that in this definition democracy is not just about political rule, although that is what we talk about most. But when democracy is associated with government, its definition becomes rule by the people. Such rule by the people is best seen in simple and small societies in which every person has a chance of direct participation. In complex and large societies the people's rule must be mediated by an agency: representation. In the contemporary world the elementary characteristic of democracy is that political office is attained through elections held at regular intervals. But this presupposes such preconditions as the abolition of restriction and the restoration of freedom of association, the right to organize, freedom of speech, freedom of the media, freedom of movement, and the rule of law. All these freedoms, typically identified as human rights, are more closely linked to the idea of a fair election than the other human rights, such as the right to life, the right to human dignity (e.g., against torture, against unwarranted invasion of privacy), and the right to personal property.

## 3. The Concept of Good Governance

Good governance consists of several factors. The first is respect for the human rights that are essential to contemporary democracy. The second is a constitution in which the relationship between the governors and the governed, as well as among the major institutions of government, is clearly defined. This means that there is a separation of powers, as well as

checks and balances, and that human rights are endorsed in the constitution. The third factor is responsiveness, transparency, and responsibility, which require some explanation. Between elections representative governments may cease to be representative, alienating themselves from the people who put them in charge in the first place. Thus, they are required to be responsive to needs as they arise and forthcoming in providing information (i.e., transparent) so that the people have a good idea of whether they continue to be properly represented or not. They must also be responsible in order to provide a continuing practice of ethics and accountability.

Perhaps there is no direct punishment that can be meted out between elections to governments that are not transparent, but regularly irresponsible governments may be voted out by other representatives of the people—their own peers—as in the vote of no confidence in the prime minister so common in parliamentary systems and in the impeachment process attached to presidential systems.

The fourth factor involved in good governance is a vibrant, politically competent civil society. This too needs an explanation. The question of monitoring representative bodies cannot be left to their peers alone; the society that put them in place has to do that, and this requires that the society utilize all the above-mentioned freedoms, especially the freedoms of association and speech, to organize and articulate positions vis-à-vis decisions of government. That is one rationale for the development of a vibrant, politically competent civil society (including nongovernmental organizations [NGOs]), that is, to keep representatives and the government—the agents of representative democracy—engaged and not alienated. The other rationale for the development of a vibrant, politically competent civil society is to create a laboratory in which society learns to be democratic. Since they are often smaller and closer to their members, organizations of civil society, including political parties and NGOs, offer opportunities in which something akin to direct democracy should thrive. In reality some civil organizations often lend themselves to autocratic tendencies among leaders. Thus, a struggle to create a vibrant, politically competent civil society takes place both at the level of the state and at that of civil society itself, involving efforts to create a democratic political-legal environment as well as to extend and intensify internal democracy within organizations of civil society themselves.

Finally, good governance and contemporary democracy in general need a continuing civic education program. No vibrant, politically competent civil society can emerge without unrelenting and unceasing civic education. Individuals need to know about their rights, and families and schools need to be tutored in the culture of democracy; civil organizations need that too. Civic education is therefore critical in representative democracy.

#### 4. Tanzanian Practice

The following is only a brief review of the Tanzanian practice in relation to the norms of democracy as set out in the preceding discussion. The review has been divided into five sections, each discussing a particular

category of Tanzanian practice. The categories relate to most of the characteristics of democratic rule described above: elections, freedom, rule of law, responsiveness, and internal party democracy.

### *A. Elections*

There have been regular elections in Tanzania since 1965, the first year of single-party, two-candidate constituency elections. Prior to 1965 there were other elections, including those that ushered in what was referred to as responsible (African) government. These, however, were not regular, being held as a basis for legitimizing change only in certain aspects of governance. Since 1965, elections have been held without fail every five years.

The major criticism of these elections, of course, relates to the lack of alternative organizations in a single-party system and the inevitable requirement that all candidates be sponsored by the party. Ironically, the latter requirement has been reinforced in multiparty Tanzania, since independent candidature is outlawed by the constitution and attendant laws. Even in the single-party era, however, a significant measure of competition, both during party selection and in the general election, was always present. Although between 1965 and 1990 the President was voted for only in terms of a "yes" or "no" vote, which over time proved to be a poor gauge of popularity in Tanzania and similar systems, the voting adult population fully understood the secret ballot and used it regularly to remove nonperforming constituency representatives. In the 1980 election about 50 percent of incumbent constituency legislators were voted out. The competition has increased with the introduction of other parties, as well as with the quantitative increase in information due to the presence of independent media, the proliferation of institutions that conduct civic education, and the growth of civil society, of which NGOs are clear examples.

### *B. Freedom*

Since Tanzania had more or less a single monolithic political organization in 1965–92, many freedoms were invariably curtailed. Although Tanzanians discussed politics vigorously among themselves as individuals, they were proscribed by law from channeling major deviating views through other political organizations or media that were independent of government.

Since 1992 there has been an explosion of channels in precisely these areas. Only the government-owned radio has a national reach, however, and this is still dominated by the governing party, CCM. Although the radio no longer "attacks" opposition parties, it maintains a bias in news reporting, and it often excludes the opposition in coverage through technical means. For example, it regards itself as duty-bound to cover major events and announcements in which the government is involved, such as an address to the Parliament by the President in which he shows his government's (and therefore his party's) success in the growth of the economy. But as long as this takes place in a noncampaign period, in which parity of parties is not

prescribed by law, the radio does not feel obliged to offer an opportunity for a rebuttal by the opposition or to cover any of its major activities.

Three incidents in 1998–99 demonstrate unresolved issues of freedom in the political arena in Tanzania. The first occurred on March 2, 1999, when the chairman of the NCCR opposition party and four other leaders were brought before a court of law, accused of having organized a public rally without police permission the previous November. The rally itself took place in the constituency where the NCCR leader was the Member of Parliament, and in comments outside the court he said that he did not need police permission to address his constituents. During the one-party era it was illegal to hold a public rally or demonstration without the permission of the (politically appointed) district commissioner. At the beginning of plural politics this law was used frequently by the government, often maliciously to deny the nascent opposition the right to hold a public rally. It was challenged in court, where the judiciary interpreted the law as merely obligating the organizers of a rally or demonstration to inform the police of the impending activity. After this court decision, the holding of many opposition rallies was made possible, but the police frequently ban these rallies on the pretext of not having enough officers to ensure law and order during the event or on the claim that the overall security situation is not conducive to such an event. This has had the effect of changing the requirement of holding a rally or demonstration, which in law amounts only to informing the police, to one of asking for their permission.

Evidence has tended to indicate that planned rallies of the governing party do not seem to suffer the same fate at the hands of the police, except in recent months, when the police banned all parties from conducting such activities in Moshi District. Police bans of this kind seem to be pervasive in Zanzibar against the only visible opposition party there, the Civic United Front (CUF). This issue remains one of the thorniest in the norms and practices of political actors on the developing democratic landscape.

The second incident concerns a speech in the capital, in which a district commissioner issued a warning to zealous religious preachers that the government would arrest all those defaming other religions and fomenting religious strife by their open-air preaching, but would protect those who were "decent." This indicated a return of open-air preaching, which had not been heard of since February 1998. Open-air preaching had gripped Dar es Salaam and Zanzibar town in 1998 and early 1999. In a few places, notably at Mwembechai in Dar es Salaam, such preaching had become militantly fused with politics as well as being very fanatical, resulting in a riot against the state in February 1998 in which some police officers were attacked, government vehicles burned, and properties of the governing party destroyed. The police responded with excessive force, its reinforcements shooting three of the militants dead and arresting over 100 others.

A debate was raised in terms of the balance needed in furthering the dictates of law and order, on the one hand, since many participants in open-air preaching activities are fanatical and unruly, and the need to protect the freedoms of speech and religion. The state appears to have been aware of these competing values, for it has banned only the preaching that disrupts

order but has not prohibited open-air preaching altogether, to the disappointment of many, especially Christians, who have called for a total ban.

Finally, there was an issue involving the chair of one of the opposition parties, CHADEMA, who remarked that were the late Nyerere, the founding President, to introduce socialist policies in the country in 1999 people would kill him by slitting his throat. Earlier in the week another leader of the opposition had remarked that Tanzania's proposed constitutional changes would be written in blood. Both leaders were censured by the editorial of the government-owned newspaper, the *Daily News*, for what the paper referred to as culturally errant and distasteful blood-curdling talk. These kinds of statements are common among political leaders, and the government has sometimes seen them as inciting the public to stage violent protests, thereby providing an excuse to arrest the leaders.

### C. Rule of Law

The leadership of the single-party system in Tanzania was not known to be grossly unmindful of the rule of law. Generally the law took its own course, though the prosecution of high-level officials suspected of having committed crimes was rare. This might have been a reflection of a rather high standard of internal leadership discipline and morality, for which TANU/CCM and its leader, Nyerere, were known. But it is also highly plausible to think that in monolithic societies it is easier for law enforcement officers to avoid such prosecutions. What is clear is that there was interference in the judiciary where cases involved the government, both as a matter of practice and as a matter of law. For example, one needed the permission of the attorney general to have a case instituted against the government. This has now been repealed. In general the judiciary itself did not feel that it enjoyed independence, and this became such an important area of legal activism that in the recent thirteenth amendment to the Tanzanian constitution, the independence of the judiciary has now been clearly stated.

### D. Responsiveness

*i. General Responsiveness.* All parties and governments that govern with relatively popular mass support have a high level of responsiveness. This was not lacking in TANU/CCM even under the single-party system. The responsiveness was largely organized around the concept of people-centered development and an attribute of the postcolonial state that was suppressive without being overtly repressive. The people-centered approach meant that nonperforming leaders were regularly censured, transferred, or removed by the party itself.

Some of the most demonstrative instances of responsiveness relate to the need for a more balanced separation of powers in the constitution and the establishment of the bill of rights within it, which were the calls of many political activists in general and of the Nyalali Commission that recommended the introduction of multipartyism.

*ii. The 1977 Constitution (as Amended).* The constitution of Tanzania exemplifies a standard separation of powers and the minimum combination that has come to be expected in modern constitutions. Since 1977 there have been numerous changes to the provisions of the constitution. The majority of these changes came after the introduction of the multiparty system of political organization in 1992. These changes translate into twelve constitutional amendments, with the eighth amendment, which is the multiparty legislation, effecting the most changes. Most of the five amendments of the multiparty era streamline the extent of the authority of the highest executives, the President, the Vice President, and the Prime Minister, in relation to the other branches of government and in response to the new situation of the absence of monopoly and supremacy of the ruling party, CCM. The totality of these multiparty changes, which were enacted by the single-party parliament before the multiparty one came into being with the 1995 general elections, clearly demonstrates a reduction of the power of the executive vis-à-vis other branches and in relation to the people generally.

*iii. The Bill of Rights.* An amendment in 1984 enshrined the bill of rights, referred to as “Basic Rights and Duties,” in the 1977 constitution. The bill is a standard one expected in the latter half of the twentieth century and is largely based on the Universal Declaration of Human Rights of 1948. It covers articles 12–32 of the constitution, but substantive protection provisions are 12–24 (thirteen articles). Four articles (25–28) address duties (of the citizen). There are derogations from the “full protection” of the rights in most of the protection articles, and then there are derogations of a general nature that are clearly addressed as such in articles 29–32.

Most constitutional guarantees of the protection of human rights elsewhere also evidence such derogations. In many of the constitutions the derogations are expressly stated as such in two or three sections, mostly relating to the need to protect the rights of the larger society against too zealous a pursuit of individual liberties, and relating to the legitimacy of a legally instituted curtailment of freedom in times of emergencies and war. But there are also other curtailments built within the provisions themselves, “clawback clauses” that give a right with one hand and virtually withdraw it with the other. In East Africa, Uganda’s 1995 constitution provides a bill of rights with the least of these derogating qualifications, and Kenya’s has the most. Tanzania’s derogating qualifications in the 1984 bill of rights involve provisions that are potentially the most vulnerable to arbitrary departure from the protection of human rights, insofar as their limiting language mostly refers vaguely to the necessity of reading the rights in relation to any other laws enacted by the legislature, some of which are extremely limiting laws indeed.

*iv. Some Statutes versus the Bill of Rights.* The limiting laws include the Preventive Detention Act, which empowers the President to detain any person for a long period of time to safeguard the security of the state. Although a 1985 amendment now allows a challenge to the detention order in court, this law, in the opinion of the Nyalali Commission, empowers the President to violate all other laws, including the constitution, and to do whatever he

likes with the life and personal liberty of an individual. Other laws include the Deportation Ordinance, the Expulsion of Undesirables Ordinance, the Regions and Regional Commissioners Act, and the Area Commissioners Act, all of which give members of the executive branch power to curtail many of the fundamental freedoms of individuals, including the right to a trial if one is accused of wrongdoing.

Interestingly, another limiting law was instituted after the advent of multiparty competition. Since 1992 political parties are registered separately under the institution of the Registrar of Political Parties, itself empowered by the Political Parties Act. What is important is that although conditions for denying registration to a political party are clearly laid down in the law, the Registrar may withhold the full registration of a party for an indefinite length of time. Without full registration status a political party cannot participate in elections. Once again this creates possibilities of arbitrary decision making and the use of law by relevant officers to curtail political competition in this important area of the freedom of association.

The limiting laws mentioned here are among the forty that were identified by the Nyalali Commission as being inimical to democracy and good governance. Many have observed that the protection of human rights, though entrenched in the constitution, cannot be fully realized in Tanzania in these conditions and that the legal environment is not yet conducive to fair political competition.

The government did not dispute the assertion that the laws in question curtailed freedom. Neither did it oppose change in this area. Debate between the government and the opposition has focused on whether these forty laws should all be repealed at once or modified from time to time as the need arises. The government favors the latter.

The government, to some extent, has been responsive to criticisms. For example, in 1992–99, almost all of the objectionable laws were amended to make them less offensive. In practice the Preventive Detention Act has not been used for years, and the government is proposing the establishment of a human rights protection watchdog in the constitutional amendments passed in Parliament in April 2000.

### *E. Political Parties and Internal Democracy*

In April the news in Tanzania was dominated by the defection of the chairman of NCCR, Mr. Mrema, to the Tanzania Labour Party. What was noteworthy in terms of the democratization process is that both Mr. Mrema and a number of high-ranking former NCCR officials, with the collusion of the then TLP chairman, declared that they now occupied the same positions in TLP as they had in NCCR, without an election. Those who had taken power in TLP appeared to be surprised at the outpouring of criticism from the public. After several months of wrangling within the TLP, the new leadership was confirmed in their positions by a vote. Previous to this event, Mr. Mrema and his group had been involved in a struggle for control of the party with another group, and each had attempted to oust the other from

the party by procedures not spelled out by the party constitution, and certainly not by democratic means.

The lack of internal party democracy has been the main source of intraparty conflicts and a factor in the continued weakness of the opposition vis-à-vis the governing party. Both by their constitution and in practice, the governing party exercises far more internal democracy than the opposition (alongside, of course, the usual backroom maneuvering for advantage). Between 1992 and 1999 there were eleven major upheavals in the opposition that concerned the lack of internal democracy.

## 5. Conclusion

It has been said before that although at a general level a constitution can guarantee the separation of powers and even a bill of rights, the language and tenor of provisions, or the attendant details, may water down the separation and balance as well as compromise the protection of rights. We have seen that the Tanzanian constitution also suffers from this problem, although there have been reviews of it in the past in the direction of positive remedies. In addition, perfectly written constitutions in these areas are themselves necessary but not sufficient conditions for such protection. Supporting laws must themselves be conducive to the practice of human rights, as well as the democratization process and good governance generally. Tanzania is found still wanting in this area. Although this would have been beyond the parameters of this article, there are other important adjuncts to democratization and good governance, such as a knowledgeable and politically competent civil society, which are necessary in providing a culture of democratic discourse and tolerance of dissent. As studies have recently indicated here in Tanzania, the embryonic status of a free civil society, the falling literacy levels, the timidity in addressing demands to government, and the culture of dependency on a "bigger brother" have militated against a vibrant civil society that enriches democratic values. In a sense the actions of political actors, including the opposition, that are not conducive to democracy and good governance are rooted in this culture of civil society.

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